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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,674	09/18/2003	George Benesh	23-0355	6272

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WOODS FULLER SHULTZ & SMITH P.C.  
ATTN: JEFFREY A. PROEHL  
P.O. BOX 5027  
SIOUX FALLS, SD 57117

EXAMINER

CULBRETH, ERIC D

ART UNIT PAPER NUMBER

3616

DATE MAILED: 04/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/665,674

Applicant(s)

BENESH, GEORGE

Examiner

Eric Culbreth

Art Unit

3616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2 and 4-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment filed 3/20/06 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: In the paragraph beginning at page 4, line 21 as amended on 3/20/06, in the fourth and fifth lines from the bottom, it is new matter to recite "for example, by wires 22)("for example" raises the possibility of alternatives which were not disclosed in the original disclosure, and members 22 were not identified as wires in the original disclosure). A suggestion might be to change the text to "connections 22".

Applicant is required to cancel the new matter in the reply to this Office Action.

2. Upon reconsideration, the rejection under 35 USC 112 first paragraph raised in the first Office Action is withdrawn. The paragraph beginning at page 5, line 12 discloses that column 36 is necessary in addition to the sensors 46 to distinguish the elements in the driver's breath.

### ***Drawings***

3. The drawings were received on 3/20/06. These drawings are approved. However, in the future, marked up versions of the drawings showing specifically what

changes were made (i.e, with each change circled) should be included with the replacement drawings.

***Claim Rejections - 35 USC § 112***

4. Claims 1-2 and 4-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- a. In claim 1, line 7 “a” should precede “breath”.
- b. In claim 4, lines 13 “are separated retention time” is not clear (apparently “by” should follow “separated”).

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claim 1 as best understood is rejected under 35 U.S.C. 102(e) as being anticipated by Ballard, Jr. et al US006853956B2 (newly cited).

Ballard Jr. et al discloses an alcohol sensor system for vehicles comprising a vehicle (the dashboard of which is shown in Figure 1), a main tube shown on sensor 13 in Figure 1 coupled to the vehicle such that the tube is accessible to a user while in a driver's position within the vehicle (i.e., next to the steering wheel in Figure 1), a sensor assembly operationally coupled to the main tube for detecting intoxicant's in the user's breath when the user blows into the main tube, and a microprocessor 15 (column 4, line 58) coupled to the sensor assembly in Figure 2. An ignition system is coupled to the microprocessor such that the system cannot be activated until the user has blown into the main tube, and the microprocessor prevents activation of the ignition system when blood alcohol is too high (see column 5, lines 2-15). The microprocessor activates a relay to allow the ignition to operate when the blood alcohol level is low enough (again, column 5, lines 2-15). The sensor assembly is contemplated as using gas chromatography to detect the level of alcohol (column 3, lines 56-62)(claim 1).

***Claim Rejections - 35 USC § 103***

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
8. Claim 2 as best understood is rejected under 35 U.S.C. 103(a) as being unpatentable over Ballard, Jr. et al.

In column 5, lines 2-15 Ballard, Jr. et al discloses the relay preventing the ignition from operating. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Ballard, Jr. et al to include locking means physically preventing turning of the ignition key in order to prevent the car from being started using one possible well known equivalent structure in the art, as locking means preventing keys from being turned are notorious in the art when it is desired to prevent the car from being started (i.e., when the steering wheel is turned after the ignition is off, or when it is attempted to start the car if it is not in park or neutral; the examiner takes judicial notice that such locking means are used to prevent the ignition key from being turned on a 2000 Honda Accord).

#### ***Allowable Subject Matter***

9. Claims 4-6 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Culbreth whose telephone number is 571/272-6668. The examiner can normally be reached on Monday-Thursday, 9:00-6:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on 571/272-6669. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eric Culbreth  
Primary Examiner  
Art Unit 3616

ec

Serial No.: 10/665,674  
Applicant: GEORGE BENESH  
Title: ALCOHOL AND DRUG SENSOR FOR VEHICLES  
Replacement Sheet 1 of 3

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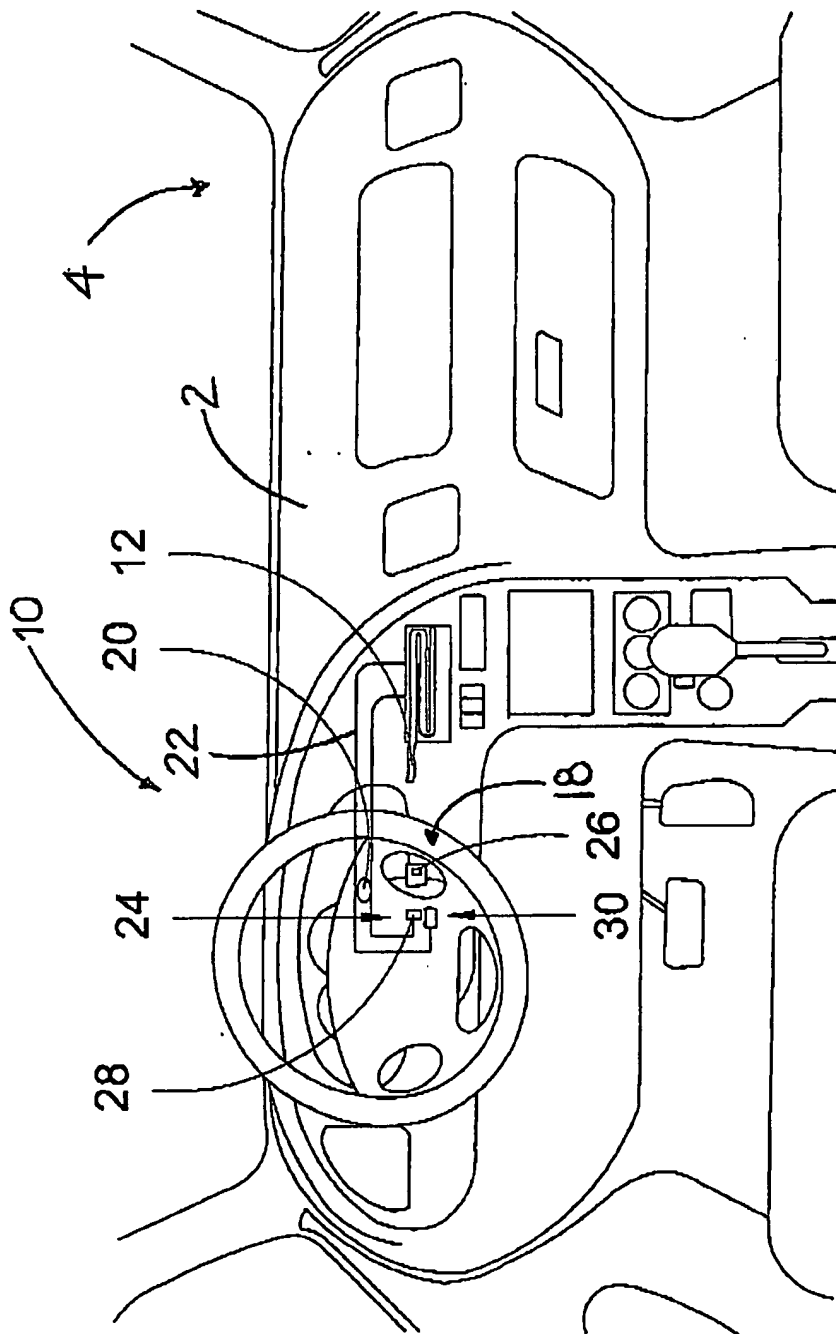


FIG. 1